IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 285 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHANKARBHAI VISHNUBHAI SINDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 285 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR HL JANI ASSTT GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/07/2001

ORAL JUDGEMENT

#. Heard Mr.H.R.Prajapati, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned AGP for the respondent - State of Gujarat.

#. In the present petition, the detention order dated

29th November, 2000 passed by the Police Commissioner, Vadodara City has been challenged by the petitioner under Article 226 of the Constitution of India. The order of detention has been passed by the Police Commissioner, Baroda City under Section 3[1] of the PASA Act and the grounds of the detention has been communicated and supplied to the petitioner under Section 9[1] of the PASA Act by the detaining authority. The present petitioner has been detained as Class-II detenu at District Jail, Junagadh. According to the grounds of detention, two offences have been registered against the present petitioner dated 21st June, 2000 and 26th September, 2000 under Section 324, 322, 504 and 114 of the IPC. Three unregistered offences are also registered against the present petitioner on 6th October, 2000, 5th November, 2000 and 22nd October, 2000. The respondent has filed reply.

#. Learned advocate Mr.H.R.Prajapati, appearing on behalf of the petitioner has challenged the detention order on various grounds but according to him, one or two contentions are enough to set aside the order of detention. He submitted that the detaining authority has taken into account the earlier order of detention dated 8th December, 1998 which has been set aside by this Court on 10th October, 1999 and the same has been referred and relied upon by the detaining authority on page 22 of the grounds of detention. This contention has been raised by the present petitioner in ground [q] of the petition. Mr.Prajapati has relied upon two decisions reported in 2000 [2] GLH p.184 and AIR 1989 Supreme Court 1234. The second contention raised by Mr.Prajapati that there was a delay in forwarding the representation by the detaining authority to the State Government. He submitted that a representation dated 29th December, 2000, according to the acknowledgment received by the detaining authority on 1st January, 2001 and the same has been forwarded by the detaining authority to the Secretary of the Home Department on 17th January, 2001 and therefore, there was a delay in forwarding the representation to the State Government. The contention which has been raised by the present petitioner in the ground [m] on page-9 of the petition. Therefore, he relied upon the decision of this Court in 2000 [1] GLH [UJ] 9, it is submitted that the detaining authority has not explained the delay in not forwarding the representation immediately to the State Government. Therefore, according to Mr.Prajapati, learned advocate for the petitioner, the order of detention is required to be set aside.

#. Learned AGP Mr.H.L.Jani, appearing on behalf of the

respondent - State has submitted that a detailed affidavit-in-reply has been filed by the detaining authority which is on record and so far as the first contention that while passing the detention under challenge, the detaining authority has taken into account the earlier detention order. However, at page 40 and 41 in para-13 of the reply, the detaining authority has submitted that he has not considered the earlier order of detention while passing the detention order. So far as the second contention is concerned, the delay in forwarding the representation, in reply filed by the detaining authority in para-11 on p.39 submitted that after receiving the representation from the present petitioner immediately detaining authority has forwarded to the State Government. Therefore, according to the learned AGP Mr.Jani, the order of detention has been rightly passed by the detaining authority and it is legal and valid one and as such no interference is required by this Court.

#. I have considered the submission of both the learned advocates for the parties. However, the fact remains that in grounds of detention at page.22, the detaining authority has referred to earlier detention order dated 8th December, 1998 which has already been set aside by this Court on 10th October, 1999. No doubt, the detaining authority in reply categorically denied this fact that he taken into account the earlier detention order but view taken by the Apex Court in a reported decision 1989 Supreme Court 1234, wherein the Apex Court has has observed that where the detaining authority while passing the second order of detention, had referred to the earlier detention order and the judgment of the High Court quashing it, presumably even for the purpose of showing that the detenu inspite of the earlier detention order, was continuing his bootlegging activities and the detaining authority said clearly in affidavit in reply that he took into consideration previous grounds of detention also for his conclusion that the detenu was engaged in bootlegging activities since long. Similarly, view taken by this Court in reported decision in 2000 [2] GLH 184, wherein it is observed that once earlier order of detention is set aside, same could not have been referred to by the detaining authority while passing the subsequent order of detention, it becomes an irrelevant ground and therefore the order of detention is set aside.

#. In respect of the second contention about non forwarding representation by the detaining authority to the State Government and delay in forwarding the representation is not explained by the detaining

authority. However, on examination of the record of the case, the representation is dated 29th December, 2000 which is at page-24 and the acknowledgment of Registered Post AD which is on page-27 is dated 1st January, 2001 and the letter dated 17th January, 2001 of the Police Commissioner of Baroda City and the detaining authority addressed to the Home Secretary of Home Department, wherein it is mentioned that the representation of the present petitioner dated 29th December, 2000 is forwarded by the detaining authority on 17th January, 2001, therefore, even if the case of the respondent is that the said presentation is received on 9th January, 2001 then also, 8 days remained unexplained by the detaining authority. Therefore, delay of 8 days in forwarding the representation which admittedly remained unexplained by the detaining authority and therefore, according to the view taken by this Court in reported decision in 2000 [1] GLH [UJ] 9, wherein, this Court has considered that even delay of four days inordinate and caused prejudice to the fundamental rights of the detenu and the order of the detention has been quashed and set aside. Similarly, in reported decision 2000 [3] GLH 458, delay in forwarding the representation has been considered to be fatal and on that ground, the detention order has been quashed and set aside by this Court. In another decision reported in 2000 [3] GLH 460, similar contention has been considered and upheld by this Court in forwarding the representation by the detaining authority to the State Government which remained unexplained has been considered to be fatal and therefore, obviously, 8 days delay in the instant case, which admittedly remained unexplained and silent by the detaining authority, deserves consideration in favour of the petitioner. Therefore, considering these two contentions and observations made by the Apex Court so also by this Court, in my opinion, the order of detention is required to be quashed and set aside.

#. In the result, the petition is thus allowed. The order of detention dated 29th November, 2000 passed by the Police Commissioner, Vadodara City is quashed and set aside. The present petitioner - SHANKARBHAI VISHNUBHAI SINDHI, who is detained at District Jail, Junagadh is ordered to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute with no order as to costs.

Date : 3-7-2001 [H.K.Rathod, J.]

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